

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FAFARD REAL ESTATE &
DEVELOPMENT CORP.,

Plaintiff,

vs.

METRO-BOSTON BROADCASTING,
INC.,

Defendant,

CIVIL ACTION NO. 04-11531-RGS

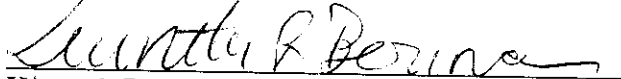
CORRECTION TO DEFENDANT'S MOTION TO DISSOLVE
LIS PENDENS, OR, IN THE ALTERNATIVE, FOR RECONSIDERATION

In defendant's motion to dissolve lis pendens, or in the alternative, for reconsideration, defendant made a statement about a landowner's right to a hearing before a lis pendens memorandum is endorsed. After filing the motion, the defendant realized that the statement requires clarification.

The lis pendens statute expressly grants a defendant landowner the right to a hearing on a motion to dissolve a lis pendens if the lis pendens memorandum was endorsed ex parte. G.L. c. 184 § 15 (c). Typically, ex parte means without notice to the opponent or opportunity for the opponent to be heard. Although the statute does not expressly state whether a hearing is required if the plaintiff serves a copy of the motion on the landowner and does not request an ex parte ruling, the intent of the statute is that the landowner will have the opportunity to be heard at some point, either "at the time the claimant first applied for a judicial endorsement under subsection (b)," G.L. c. 184, § 15(c), or on a motion to dissolve the lis pendens "[i]f the memorandum is approved ex parte." Id.

The statement in defendant's motion to dissolve – that “the lis pendens statute gives defendant the right to a hearing before a lis pendens memorandum is endorsed and recorded against defendant's property” – is inaccurate. It should have read, “the lis pendens statute contemplates a hearing before a lis pendens memorandum is endorsed and recorded against defendant's property, unless the judicial endorsement is made ex parte, in which event the landowner is entitled to a prompt hearing on a motion to dissolve the lis pendens.”

METRO-BOSTON BROADCASTING, INC.
By its attorneys,



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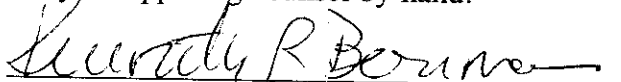
Boston, Massachusetts 02210

(617) 439-2000

August 25, 2004

Certificate Of Service

_____ I certify that I served this document today on opposing counsel by hand.



Kenneth R. Berman

August 25, 2004